IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 02/2014**
HOLDEN AT NDOLA **SCZ/8/327/2013**
(Civil Jurisdiction)

BETWEEN:

FLORENCE SIKOMBE **APPELLANT**

AND

STANBIC BANK (Z) LIMITED **RESPONDENT**

Coram: Mambilima - CJ, Musonda and Chinyama - JJS.

On 7th June, 2016 and on 10th, June, 2016.

For The Appellants : Mr. G. Nyirongo of Nyirongo and Company.

For The Respondent : ECB Legal Practitioners (No appearance).

J U D G M E N T

Chinyama, JS, delivered the Judgment of the Court.

Cases referred to:-

1. **Zambia National Provident Fund v Chirwa (1986) ZR 70**
2. **Zambia Electricity Supply Corporation Limited v Muyambango (2006) ZR 22**
3. **Attorney General v Richard Jackson Phiri (1988/1989) ZR 121**
4. **Nkhata and Four Others v Attorney-General (1966) Z.R. 124**
5. **A.M.I Zambia Limited v Peggy Chibuye (1999) ZR 50**
6. **Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR 172**
7. **Banda v Chief Immigration Officer and the Attorney General (1993 – 1994) ZR 80**
8. **R v Bournewood Community and Mental Health NHS Trust, ex parte L (Secretary of State for Health and Others Intervening) (1998) 3 All ER 289**

Other materials referred to:-

1. **Halsbury's Laws of England, 4th Edition, Volume 45, Butterworths & Co., 1985.**
2. **W.V.H. Rogers, Winfield and Jolowicz on Tort, 11th Edition, London: Sweet & Maxwell, 1979.**

The Appellant, who was one of two plaintiffs (the other being Mr. Daniel Mbewe) in the court below, appeals against the

Judgment of the High Court at Kitwe, in which she had claimed (i) damages for false imprisonment; (ii) damages for mental torture and anguish; (iii) a declaration that the plaintiff's two suspensions were wrongful, malicious and baseless; (iv) damages for innuendo, libel and slander; (v) damages for unlawful and wrongful termination or dismissal from her employment; (vi) a declaration that her dismissal from employment was unlawful and wrongful; (vii) any other relief the court may deemed fit; and (viii) interest and costs.

It is necessary at this early stage to point out that the Respondent did not lead any evidence at the trial of the cause in the court below, the intended witness having failed to turn up. Suffice to state, however, that the Appellant was subjected to cross examination by the learned advocate for the Respondent at the close of her evidence in chief. Further, that there were submissions filed by the learned advocates for the Respondent which the lower court clearly took into account.

Facts that emerged from the evidence of the Appellant in the lower court are that the Appellant was employed by the Respondent in 1993 as a clerk. In January, 2007 she was suspended from her employment on account of unspecified financial irregularities. In February, 2007 the suspension was

lifted. In May, 2007, however, the Appellant was questioned over a sum of ZMK800million which had allegedly gone missing at the Respondent's Chingola branch were she was stationed. During the questioning, Hankie Neil, an investigator who had come from South Africa, asked the Appellant about the money. She replied that there was no physical cash that had gone missing; that the ZMK800million was an entry which had "dropped" whilst being passed in a system suspense account held at head office; that the case was reported to management; that the (branch) manager was pursuing the case; and that the investigators could check the suspense account at head office. Mr Neil then retorted *"You stupid fools, you think I can come all the way from South Africa to come and clear up your mess. You are fired"*. The appellant told the lower court that She understood the word "fool" to mean that she was not fit to work in a bank, that "stupid" meant that she did not think; "to clear up the mess" as referring to a toddler and not an adult; and the words "you are fired" to mean that she was fired before she could even be given a disciplinary letter or charge. She also stated that the words were uttered in the presence of her co-plaintiff, Mr. Mbewe as well as a local investigator named Herman Banda and an Indian lady who had also come from South Africa with Mr. Neil. She told the court that she felt humiliated and had

not expected Mr. Neil "*to pass such remarks as remarks like that were passed during the colonial rule*" (see pages 322 to 323, lines 15 to 30 and 1 to 7 respectively of the Record of Appeal).

The next day, the Appellant was subjected to a lie detection procedure also known as a polygraph test which involved tying her arms and feet with a cord while another cord was tied across her belly to the back. She was made to sit on a chair in a room occupied by herself and the Indian lady from South Africa who was administering the procedure using a machine. The appellant was required to be still while a series of fifteen questions were repeatedly asked. She was made to sign a consent form before the process started. The proceeding lasted six hours. An armed police officer had been placed at the entrance to the room in which the procedure was being conducted. She was not informed about the outcome of the test.

On 24th May, 2007 the appellant was yet again suspended *"to aid investigations into alleged financial irregularities at the Branch"* as stated in the letter which communicated the suspension. On 17th July, 2007 the appellant was charged by letter of that date with the following offences which were accompanied by the relevant particulars:

1. Negligence of duty resulting in the bank or employee or any person having business with the bank in financial loss contrary to clause 3.16 of the Managerial, Grievance and Disciplinary Code. The particulars of the offence were that the plaintiff failed to observe dual control as Asset Custodian and create records (cash summaries, cash register etc) as per operational requirement, thereby failing to provide the bank with reliable financial records leading to financial loss of ZMK136milliom and USD58,172.03.

2. Providing false information to the bank with intent to defraud or mislead the bank contrary to clause 4.12 of the Managerial, Grievance and Disciplinary Code.

The particulars of the offence were that the appellant countersigned a cash excess declaration of ZMK664million on 29th December, 2006 without physically verifying the cash she had signed off.

It was further elaborated in the same letter conveying the charges that a verification of treasury cash established a shortage of ZMK136million and USD58,172.03; that the appellant later cancelled her signature on the cash summary for 29th December, 2006 declaring the ZMK664million excess. The foregoing actions

were stated to be in breach of clause 5 of the Bank's General Conditions of Service Rules and Standing Instructions.

The Appellant responded to the two charges in writing. In relation to the negligence charge, she explained that the responsibility of updating the (cash) registers and making summaries was with Mr. Daniel Mbewe who was in charge of the Cash Department while she headed the Customer Services Department. She stated that she could only do Mr. Mbewe's work if he was off duty or sick and only if the (branch) Manager sanctioned it in conformity with Bank policy, the rules and standing instructions. She further explained that Mr. Mbewe was verbally cautioned by the Manager in November, 2006 for failing to update the cash register and failing to make cash summaries after she had reported him for the omissions.

In relation to the charge of providing false information, the appellant denied signing the cash register but stated that she mistakenly initialled it because in January, 2007 there was an audit and she had signed on a wrong date of December, 2006. She stated though that she later reported the anomaly and apologised for it.

On 3rd August, 2007 a disciplinary hearing was conducted as per minutes at pages 216 to 220 of the Record of Appeal. It is notable that at the commencement of the disciplinary hearing the sum of ZMK136million alleged in the first charge was amended by replacing it with the sum of ZMK105,518,139. At the end of the hearing the appellant was found guilty as charged and it was determined that she be dismissed from her employment as a deterrence to other would be offenders. The Appellant appealed unsuccessfully to the Respondent's Managing Director. Her subsequent action for the several reliefs in the High Court at Kitwe were dismissed with costs as per judgment at pages 7 to 36 of the Record of Appeal.

When the Appellant was cross-examined she conceded that she acted as co-custodian with Mr. Mbewe in relation to cash and records relating thereto (at page 330, lines 15 to 17 of the Record of Appeal): she conceded that the allegation in the negligence charge did not accuse her of stealing money but that she had failed to keep proper records as per operational requirements in her role as a co-custodian (at page 331, lines 6 to 11 of the Record of Appeal); in relation to the charge of providing false information, the Appellant conceded that she had signed a cash excess declaration

of ZMK664million and that she did not physically check the cash because she was on leave and only returned to sign off the cash.

The Appellant further relented in continued cross-examination that two verifications of the cash (she signed for) were done and a shortfall was discovered; that a third verfication (relating to delayed updating of records as we understood the evidence) was conducted which yielded the results that cash summaries and registers balances were behind by two or three weeks (at page 332 to 333 lines 1 and 1 to 5 respectively of the Record of Appeal).

The Appellant also confirmed initially that on the second charge (of providing false information) her response to the disciplinary committee was that she was guilty as charged. She explained that she acted in that manner to avoid an audit query because auditors were coming. Ultimately, the Appellant responded that she had admitted both counts (the two offences in the disciplinary hearing) and that she should have taken interest when she noticed that Mr. Mbewe was lax about it (updating records) (at page 333, lines 27 to 29).

The appellant, however, explained that there was no money missing in the Bank; that it was just books that were not balanced; the books were behind by two or three weeks. She agreed that on

the foregoing basis alone, the bank was entitled to take out disciplinary action against her and Mr. Mbewe.

It is notable that prior to the commencement of the trial in the lower court the Appellant had applied by summons and affidavit for the Respondent (Defendant at the time) to produce specified documents, purported to be in the Respondent's possession, at trial pursuant to Section 27 of the **High Court Act, Chapter 27 of the Laws of Zambia** (at pages 266 to 272 of the Record of Appeal). In opposing the application, learned counsel for the Respondent argued, among other things, that the application was wrongly brought under Section 27 aforestated which, according to counsel, compels witnesses, who are not party to the case, to attend court to give evidence and/or to bring documents. The learned advocate for the Appellant, however, contended that the section gives the court power to summon "any person" to give evidence or to produce any document in his possession; that the phrase "any person" does not preclude the defendant from producing specific documents. In her ruling, the learned High Court judge agreed that Section 27 of the High Court Act cannot be used by a party to proceedings to compel, through the court, the production of documents in that party's possession; that the provision was meant, as stated in the marginal note to the provision, for summoning and compelling

attendance of witnesses. The learned judge determined that the application should, accordingly fail. She pointed out though that the order made on 30th June, 2010 for the defendant to provide documents as undertaken by the advocate still stood. The ruling was never appealed against. The forgoing are the facts arising from the evidence given by the Appellant.

Dissatisfied with the judgment by the court below, the Appellant appealed to this Court advancing three grounds of appeal, namely that: -

1. **The trial court erred at law and facts when it found at page J48 (the correct page is J19) that it was quite clear that the Appellant had committed the offences charged contrary to the evidence on record.**

2. **The trial court erred at law and facts when it held that, it was not for the court to consider the merits of the evidence adduced during the disciplinary proceedings when it is clear from a plethora of decided Supreme Court authorities that it is the issue of whether or not the employee committed the alleged offence which is cardinal and not the procedure followed to dismiss the employee.**

3. **The trial court erred at law and facts when it found that despite the undisputed evidence of the Appellant of being subjected to a lie detector or test and an armed police officer waiting outside the locked interviewing room, there was no false imprisonment."**

Mr. Nyirongo, the learned advocate for the Appellant, entirely relied on the Appellant's Heads of Argument filed in this appeal and did not make any oral augmentation.

In support of ground one of the appeal, learned counsel opened the argument by referring to the learned trial judge's finding (at page 25 of the Record of Appeal) that "*it was quiet clear that they had committed the offences* charged". Counsel contended that the Appellant's dismissal from employment with the Respondent Bank was unfair, wrongful and unlawful as several bank documents, including cash summaries and the profit and loss accounts, which would have proved that the Appellant had not committed any dismissible offence were not produced in court by the Respondent and its advocates despite the trial judge ordering them to do so. It was submitted that the end result was that she suffered an injustice.

In support of ground two, it was contended to the effect that in dismissal cases, the issue is whether or not the dismissed employee had committed the offence alleged and not necessarily the procedure adopted to effect the dismissal. The learned advocate, accordingly, took issue with the finding made by the learned Judge at page 26 of the Record of Appeal that "*on the whole matter, the Defendant had valid disciplinary powers, which were properly exercised. It is not for me to consider the merits of the evidence adduced during the disciplinary proceedings or to inquire whether the Defendant's decision was reasonable.*" It was

submitted that this is contrary to our decisions on dismissals as held in the cases of **Zambia National Provident Fund v Chirwa**[1] and **Zambia Electricity Supply Corporation Limited v Muyambango**[2] in which we stated that:-

> "**Where it is not in dispute that an employee has committed an <u>offence</u> for which the appropriate punishment is dismissal and he is so dismissed, no injustice arises from a failure to comply with the laid down procedure in the contract and the employee had no claim on that ground for wrongful dismissal or a declaration that the dismissal was null and void.**" (emphasis added).

It was argued that in the case, before us, there is a dispute that the Appellant did commit the alleged offences as the Appellant's contention is that had the bank produced the documents she needed, she would have more clearly demonstrated that she did not commit any offence. The case of **the Attorney General v Richard Jackson Phiri**[3] was also relied on as authority.

In that case we stated that:-

> "**We agree that once the correct procedures have been followed, the only question which can arise for the consideration of the court, based on the facts of the case, would be whether there were in fact facts established to support the disciplinary measures since it is obvious that any exercise of powers will be regarded as bad if there is no substratum of fact to support the same. Quite clearly, if there is no evidence to sustain charges levelled in disciplinary proceedings, injustice would be visited upon the party concerned if the court could not then review the validity of the exercise of such powers simply because the disciplinary authority went through the proper motions and followed the correct procedures.**"

It was thus submitted that the seemingly correct procedure followed in dismissing the Appellant lacked the requisite

substratum of fact to support it as there are no facts established to support the disciplinary measures which were meted out on the Appellant. In support of this argument, Counsel pointed out the Appellant's evidence at pages 326 to 327 lines 22 to 29 and 1 to 5 respectively, of the Record of Appeal, that:-

> **"The book which I initialled is not in court. It was one of the documents we requested the bank to give us, but which has denied. The K664,000,000 is an overage meaning that it is not a shortage in the bank but it is excess money. The document that would show that there was an average are the cash summaries which we requested for from the bank, but the bank has refused. The entries that were passed show that there was excess money in the bank to take to an account which we call the profit and loss account, the instructions were given to me in person, by the personal banker Mrs Mwenya Nsomi to pass. These entries were requested for to produce to the court but the bank has denied."**(sic)

Regarding ground three, it was argued that a case for false imprisonment was established against the Respondent Bank as the undisputed evidence shows that the Appellant was subjected to a lie detector test in a bid to find the truth over the alleged missing money; that there was an armed police officer outside the door of the office in which the test was being done and the door to the interview room was locked. The Appellant's response under-cross examination was highlighted when she stated at page 334 lines 18 to 20 of the Record of Appeal that: "*I consented under duress. I read this and I refused. But she said to me that if I decline to take the test it would mean I was guilty. That was when I signed. I agree that no force was used on me to administer the test.*" As authority, Counsel

cited from **Halsbury's Laws of England, paragraph 606** wherein the learned authors state as follows:-

> "**Any total restraint of the liberty of the person for however short a time by the use or threat of force or by confinement, is an imprisonment**"

The Appellant prayed that we uphold the Appeal.

Counsel for the Respondent did not attend the hearing of the appeal. However, Heads of Arguments had been filed. In opposing ground one, it was pointed out that, in this ground, the Appellant is challenging the findings of fact made by the trial court that she had committed the offences charged. Counsel accordingly cited the case of **Nkhata and Four Others v the Attorney-General**[4] in which the Court of Appeal, forerunner to this court, laid the criteria for reversing or interfering with a trial court's findings of fact as follows:-

> "**A trial Judge sitting alone without a Jury can only be reversed on question of fact if (1) the Judge erred in accepting evidence, or (2) the Judge erred in assessing and evaluating the evidence by taking into account some matter which he should have ignored or failing to take into account something which he should have considered, or (3) the Judge did not take proper advantage of having seen and heard the witness (4) external evidence demonstrates that the Judge erred in assessing the manner and demeanour of the witness.**"

It was submitted that the evidence which was accepted by the learned trial judge fully justified the findings made and none of the conditions quoted in the above cited case have been satisfied to

enable us disturb those findings. Counsel quoted a portion of the judgment in the court below as follows:-

> **"The Plaintiffs agreed that the Defendant followed the stipulated disciplinary procedure in dealing with them. It was also quite clear that they had committed the offences charged. PW1 agreed that she was guilty of the second charge; she appended her signature because she was trying to avoid an audit query; she could have taken keen interest when she realised that PW2 was lax; and the bank was justified in taking out disciplinary action against them. She blamed PW2 as the main custodian. PW2 blamed the faulty system, but agreed that in the absence of cash summaries (which were behind by 2-3 weeks), one was still able to balance using cash registers. He agreed that PW1 blamed him and that he blamed her; and that Yondela attended the disciplinary hearing and informed the meeting that he (PW2) had asked him to step aside from his computer and then posted the entries. These were clear admissions. I accept that the appropriate punishment for the offences under clauses 3.16, 4.12 and 4.12 of the Disciplinary Code was summary dismissal. On the whole matter, the Defendant had valid disciplinary powers, which were properly exercised... "**

To further justify whether the findings of the trial court should be impeached we were reminded of our decision in the case of **A.M.I Zambia Limited v Peggy Chibuye**[5] that:-

> **"The Supreme Court has evolved and constantly affirmed some definite principles when it comes to reversing a trial court's findings of fact, especially those based on credibility. Not having had the advantage of seeing and hearing the witnesses at first hand which the trial court has, we do not lightly interfere unless it unmistakably appears that the trial court fell into error and could not have taken proper advantage of seeing and hearing the witnesses at first hand. The first hurdle confronting the appellants was the finding on an issue of credibility that the exemption clause was not brought to the attention of the respondent at the time of entering into the contract. We have not been given any justifiable excuse for reversing the learned trial judge and this alone resolves the appeal."**

It was contended that the first hurdle the Appellant must overcome is to establish that in arriving at the findings of fact the court below fell into error and could not have taken proper

advantage of seeing and hearing the witnesses at first hand; secondly, that the findings of fact made by the lower court were perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts as we decided in the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**[6]. Further, the case of **Banda v Chief Immigration Officer and the Attorney General**[7] was cited for our holding that an appellate court will not interfere with the findings of fact of the lower court *"unless it is apparent that the trial court fell in error".*

It was submitted, however, that in this case the learned trial judge clearly paid attention to the evidence of the Appellant; that the judge went further to examine the Respondent's Disciplinary Code and observed that the appropriate punishment for the offences charged was summary dismissal. It was submitted, therefore, that the route taken by the judge was consistent with a trial court that took full advantage of the ocular perception of the witnesses and is sound at law and beyond reproach.

It was contended that the findings of fact by the court below cannot by any stretch of imagination be said to be perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts as the judge had taken full advantage of the documentary evidence tendered before her as well as the

testimony of the witnesses at trial. Further, that the court found that under cross-examination, the Appellant had admitted having committed the second offence and positively affirmed the Respondent's right to take out disciplinary action which resulted in her summary dismissal. It was submitted that dismissal was the proper penalty under the disciplinary procedure and the judge cannot be faulted for having taken advantage of the clear admissions of wrongdoing of the Appellant and for concluding that the Appellant was not entitled to the reliefs sought as this was a reasonable finding of fact in view of the evidence which emerged at trial.

With regard to the Appellant's argument that the Respondent did not produce documents before the court below which could have shown that she was not guilty, the Respondent submitted that the production of the said documents would not have aided the Appellant in anyway. Counsel referred to the offences charged, the attendant particulars and the Appellant's admission of guilt in respect of the second offence as charged. It was thus submitted that it is difficult to fathom how production of the cash summaries and the profit and loss account would have aided the Appellant's case. It was submitted that no injustice was done to the Appellant as production of the said documents would not have taken away

the fact that the Appellant had committed the offences charged; that the trial judge was on firm ground when she held that the appropriate punishment for the said offences under clauses 3.16, and 4.12 of the Respondent's Disciplinary Code was summary dismissal. It was argued that ground one lacks merit and we should dismiss it.

In opposing ground two, the Respondent submitted ultimately that in dismissal cases it was not the duty of the court to consider the merits of the evidence adduced during the disciplinary proceedings or to inquire whether the Respondent's decision was reasonable. The case of **Attorney General v Richard Jackson Phiri**[3] was relied on for the same holding relied on by the Appellant.

It was acknowledged that there is no contention that procedure was followed in this case, that the only question that remains is whether there are facts in this case to support the disciplinary action taken. It was, however, submitted that the words "*substratum of fact*" do not mean that the wrong doing must be established as a matter of fact. As authority, Counsel cited the case of **Zambia Electricity Supply Corporation Limited v David Lubasi Muyambango**[2] in which we held, *inter alia*, that:-

> **"It is not the function of the Court to interpose itself as an appellate Tribunal within the domestic disciplinary procedures to review what others have done. The duty of the court is to examine if there was the necessary disciplinary power and if it was exercised properly."**

It was submitted that the effect of the two decisions above is that once the court makes a finding that the correct disciplinary process was observed, the only question that can arise is whether or not there is enough substance in the evidence to support the findings made by the employer that the employee did commit the said offence and in so doing the court does not sit as an appellate tribunal. It was submitted that the court's duty in administering justice in such cases is to confirm that there is prima facie evidence to support the finding of guilt as determined by an employer and that proper procedure has been followed; that in the current case, it is clear that there is enough substratum of fact to support a finding of guilt as shown in the minutes of the initial disciplinary hearing at pages 217 to 220 of the Record of Appeal; that a perusal of the minutes will show that the appellant had admitted having committed the said offences charged; therefore, that the trial judge was on firm ground when she dismissed the claim for wrongful, unlawful or unfair dismissal. It was argued that even assuming that the court had to take into account the fact whether the appellant had committed the offences, that the trial

court did in fact take this into account when it found that the Appellant had committed the offence for which she was charged as there were clear admissions of wrongdoing on the Appellant's part. We were accordingly, urged to dismiss ground two of this appeal.

In opposing ground three, the Respondent submitted that the learned trial judge was on firm ground when she held that the Appellant had failed to prove the allegation of false imprisonment. Counsel approved of the definition of the phrase "false imprisonment" alluded to by the trial judge recited from **Halsbury's Laws of England** as constituting **"any total restraint of the liberty of the person, for however short a time by the use or threat of force or by confinement is an imprisonment".** The learned advocate for the Respondent then referred to, among other authorities, the text book **Winfield & Jolowicz on Tort** which defines false imprisonment as **"the infliction of bodily restraint which is not expressly or implied by the law."** It was argued that the subjection of the Appellant to a lie detection test was in a bid to find the truth over alleged missing monies. It was submitted that the trial judge rightly held that an employer may investigate an employee if they become aware of possible conduct that may justify disciplinary action and that it was an investigator's role to investigate the facts of the matter; that the Appellant did

consent to the conduct of the lie detection procedure and that her being bound in the limbs and across the abdomen was for the purpose of restraining her from making movements which would affect the results of the test. She also admitted that after the test, she left the room and worked for the rest of the day. Therefore, neither the fact that the door was locked nor that there was an armed policeman outside the door had a bearing as there is no material on record to support the claim that the Appellant was restrained from leaving the room at any given point.

It was contended that there is no convincing evidence that the Appellant was forcibly held in the manager's office or that she had at any one time wanted to leave but was restrained or that the police officer was by the door to prevent her from leaving. The case of **R v Bournewood Community and Mental Health NHS Trust, ex parte L (Secretary of State for Health and Others Intervening)**[8] was also relied upon in which Geoff, LJ stated as follows:-

> **"for the tort of false imprisonment to be committed, there must in fact be a complete deprivation of, or restraint upon, the plaintiff's liberty. On this the law is clear. As Atkin, LJ said in Meering v Grahame-White Aviation Co Ltd (1920) 122 LT 44 at 54, 'any restraint within defined bounds which is a restraint in fact may be an imprisonment.' Furthermore, it is well settled that the deprivation of liberty must be actual, rather than potential. Thus in Syed Mahamad Yusuf-ud-Din v Secretary of State for India in Council (1903) 19 TLR 496 at 497, Lord Macnaghten said: 'nothing short of actual detention and complete loss of freedom would support an action for false imprisonment.' And in Meering's case**

> **(1920) 122 LT 44 at 54-55, Atkin LJ, was careful to draw a distinction between restraint upon the plaintiff's liberty which is conditional upon his seeking to exercise his freedom (which would not amount to false imprisonment), and an actual restraint upon his liberty**."

It was submitted that in the current case, there is no evidence on record to suggest that the Appellant's liberty was completely restrained or that there was actual detention and a complete loss of freedom but that the Appellant exercised her freedom of leaving the room; therefore, that the Appellant's claim for false imprisonment must fail. The Respondent beseeched us to dismiss the whole appeal with costs.

We have, considered the three grounds of appeal, the arguments, the judgment appealed against as well as the evidence in the court below. We are of the view that grounds one and two are intrinsically related as they both deal with the justification for the Appellant's dismissal from employment. In this sense we see no need to reinvent the proverbial wheel by making unnecessary extrapolations as to when a dismissal is justified. The substance of these two grounds is that there was no evidence of the basis on which the court found the Appellant to have committed the offences charged.

The point of departure in resolving the arguments in our view is our holding in the case of **Attorney General V. Richard**

Jackson Phiri[3] cited in the parties submissions and which we quoted above. In this case it is not in dispute that the correct procedures provided under the Respondent's Managerial, Grievance and Disciplinary Code were followed. Therefore, what remained was for the lower court to establish *"whether there were in fact facts established to support the disciplinary measures since it is obvious that any exercise of powers will be regarded as bad if there is no substratum of fact to support the same"* because *"quite clearly if there is no evidence to sustain charges levelled in disciplinary proceedings, injustice would be visited upon the party concerned if the court could not then review the validity of the exercise of such powers simply because the disciplinary authority went through the proper motions and followed the correct procedures".* All the foregoing we said in the **Richard Jackson Phiri**[3] case. We are also mindful of our decision in the **David Lubasi Muyambango**[2] case and similarly decided ones that courts must not interpose themselves as appellate tribunals within the domestic disciplinary procedures to review what others have done, that the duty of the court is to examine if there was the necessary disciplinary power and if it was exercised properly.

In the case before us there is clear evidence as shown from the evidence adduced by the Appellant during her cross-examination that she had relented and admitted having committed the offences and that the Respondent was entitled to invoke the disciplinary process. The Appellant was not accused of stealing money but of being negligent in failing to update records and also that she provided false information by signing off a cash excess declaration without verifying the cash but that when a verification was done a shortfall was discovered in the sum of ZMK105,518,139 and US$58,172.03. On this last point, it is the Appellant's position that documents in the Respondent's position which were not availed in spite of a court order would have helped her to prove that there was no loss of money. We note, however, that the absence of the documents notwithstanding, the Appellant did not make any effort to demonstrate what it is that is in those documents which could have assisted her case. It goes without saying that oral evidence is capable of providing proof in the absence of documents pursuant to the evidentiary rule that a party must always endeavour to provide the best evidence that is at their disposal. As we have said the Appellant did not explain what was in the documents which could have exonerated her. More importantly though she made admissions that made it

unnecessary to look elsewhere. It is clear that the learned trial judge did address herself to the admissions made not only in the trial but also before the disciplinary committee. In the circumstances we cannot escape but agree with the trial judge's finding that the Appellant had clearly committed the two offences charged.

In the case at hand the learned trial judge refused to consider the merits of the evidence adduced in the disciplinary proceedings or to inquire whether the defendant's decision was reasonable. As we understand the learned judge, she was merely complying with the principle that it was not her function to interpose herself in what the disciplinary committee had done. This is in keeping with the various authorities and we cannot fault her.

The appellant was charged with negligence for failing to provide the bank with reliable financial records. She was also charged with providing false information when she countersigned a declaration of a cash excess of K664 million without verifying it. As the learned trial judge found the penalties for both offences under the disciplinary code was summary dismissal. Indeed the appellant did exculpate herself after she was charged. She was heard by the disciplinary authority which on the basis of admissions she had made found her guilty as charged. She

appealed unsuccessfully. The learned judge gave reasons for holding that the Appellant had committed the offences charged. As we have said we are unable to fault the learned judge. In the result we find that grounds one and two of the appeal have no merit and we dismiss them.

Regarding ground three, the issue to determine is whether the Appellant could really be said to have been falsely imprisoned in the circumstances of the polygraph test proceedings. Out of the authorities cited by the parties, it can be plainly seen that the test for false imprisonment is the total deprivation of a person's liberty for however short a period by the use or threat of force or by confinement. The facts disclosed in this case are clearly that the Appellant reluctantly acceded to the administration of the lie detection procedure. The procedure needed parts of her body to be bound to restrain her from movement. There was an armed police officer at the door. The reason for the police officer was not explained. It is clear, however, that the Appellant could terminate the procedure and leave whenever she wanted to. We are not able to say in the circumstances that there was a total deprivation of the Appellant's liberty so as to qualify her detention as false imprisonment. We would accordingly hold that there is no merit in this ground and we equally dismiss it.

All in all, the appeal in this matter fails. Costs are for the Respondent to be agreed by the parties and taxed in default of agreement.

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I.C. MAMBILIMA
CHIEF JUSTICE

.....
M. MUSONDA, S. C.
SUPREME COURT JUDGE

.....
J. CHINYAMA
SUPREME COURT JUDGE