

IN THE HIGH COURT FOR ZAMBIA

COMP/IRCLK/22/2016

INDUSTRIAL RELATIONS DIVISION

HOLDEN AT LUSAKA



BETWEEN:

STEPHEN KATABANYA

COMPLAINANT

AND

ZAMBIA BREWERIES PLC

RESPONDENT

BEFORE: HON. JUDGE M. K. CHISUNKA

APPEARANCES:

For the Complainant : In Person.

For the Respondent: Mr. A. Tembo – Tembo Ngulube Associates.

J U D G M E N T

Legislation Referred to:

- 1. Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.***

Introduction

1. The Complainant filed a Notice of Complaint on 28th January, 2016 against the Respondent seeking the following relief:
 - (a) Notice pay.
 - (b) Breach of contract.
 - (c) Any other benefits the Court may order.

Nature of the Complainant's claim

2. The Complainant's claim is that the Respondent terminated his services on 24th December, 2015 without notice and was therefore in breach of contract. That his contract was curtailed by the termination before he had served the full term of the contract.

Nature of Respondent's Defence

3. The Respondent, in its Answer filed on 11th March, 2016, denies liability and contends that the claim by the Complainant was baseless as his contract of service was lawfully terminated. The Respondent further contends that the Complainant was guilty of absenteeism and failed or neglected to respond to the charges against him and was paid all his dues after the termination of contract.

Facts not in Dispute

4. The following facts are not in dispute:

- 4.1 That the Complainant was employed by the Respondent initially as a General Worker on 2nd June, 2008 under a one (1) year fixed contract.
- 4.2 That on 11th January, 2012, the Complainant was engaged as an Attendant under a fixed term contract ending on 10th July, 2013.
- 4.3 The Complainant continued to work for the Respondent beyond 10th July, 2013 under contract dated 23rd September, 2015 which contract was to run for 10 months.
- 4.4 On 24th December, 2015 the Respondent terminated the Complainant's services by letter dated 28th December, 2015.
- 4.5 The letter of termination is exhibited as "SK2" to the Complainant's Affidavit and was couched in the following terms:

"You are hereby advised that your contract with Zambian Breweries has been terminated with effect from 24th December, 2015.

This is for the offence of reporting late for work without explanation, absenteeism without explanation, leaving your work station without permission and loitering on duty. You will be paid your dues as follows:

- *Salary due to you up to 24th December, 2015.*
- *Any outstanding overtime and leave pay due.*
- *Any outstanding amounts due to the company will be recovered from your dues.*

Please ensure that you surrender any company property that may be in your possession to your head of department"

Issues to be determined by this Court

5. From the two contending positions of the parties, it appears to me that the issue to be determined is whether or not, on the evidence before me:

(a) The termination of the Complainant's employment by way of summary dismissal was wrongful, unfair and unlawful.

(b) The Complainant is entitled to any relief.

To be able to resolve these issues, I must first review what terms and conditions applied to the employment relationship between the Complainant and Respondent, thereafter review the general principles of law applicable to such a relationship in relation to termination.

6. From the evidence on record it is clear that the last contract signed by the Complainant is the one dated 23rd September, 2015 which commenced on 21st September, 2015, it was meant to be for a period of ten months only. The Respondent relies on the same document in contending that the Respondent had the right to terminate the Complainant's services summarily in accordance with its terms. I have no difficulty in finding that the said contract outlined the terms and conditions of service which governed the employment relationship of the Complainant and the Respondent.

Whether the Dismissal was wrongful, and or unlawful

7. In his written submissions filed into Court on 22nd September 2017, the complainant submits that his contract was terminated without notice and he was not paid anything in lieu of notice and that no reasons for the termination were advanced.
8. The Respondent did not file any submissions. It is clear from the Answer, however, that the Respondent's position is that the termination was in accordance with the contract and that all his dues were paid after the termination.
9. Regarding the issue to be determined, I have examined the copy of the contract of employment between the Complainant and the Respondent which guided their employment relationship. I consider paragraphs 10 and 12 relevant to these proceedings. Paragraph 10 provides as follows:

"Whilst in the service of the company you will be subject to all applicable work rules and procedures as amended from time to time. (SIC). You should familiarize yourself with the relevant regulations..."
10. And paragraph 12 with regard to termination (quoting the relevant parts) provides:

"... the company shall be entitled to terminate this contract prior to the expiration of the employment period, on notice. This contract will terminate on the termination date or any date prior

thereto as may be determined by the company, subject to the following conditions:

(a)...

(b)...

(c) Summarily, without notice, for any cause recognized in law as sufficient."

11. In terms of the law governing termination of employment, the Employment Act is the starting point. Section 36 of the Employment Act, Cap 268 permits the termination of a written contract in any manner in which a contract of service may be lawfully terminated. Where the termination is at the instance of the employer, the employer is obligated to give a reason(s) for the termination of that employee's contract and such reason must not fall under those prohibited by the Act.
12. The guidance to be discerned from this provision is that the law permits the termination of employment in any lawful manner. For a termination to be considered unlawful, one must show or demonstrate that the Employment Act provisions or some other relevant applicable statute law had been breached or violated.

Wrongful Dismissal

The general principles of law with respect to wrongful dismissal are clear and have been stated frequently by the Courts in this jurisdiction. Wrongful dismissal is essentially a

common law claim founded on breach of the contract of employment which gives a party the right to claim for damages. Simply stated, a wrongful dismissal is the termination of the contract of employment in a manner that violates the terms of the contract.

Evaluation

13. Having outlined the basic principles that underpin the two concepts of unlawful and wrongful dismissal, I now look at the evidence before me. The first question is whether the termination in the instant case amounts to an unlawful dismissal. I have already observed that S.36 of the Employment Act in Zambia permits a written contract of service to be lawfully terminated.
14. In this case, I have examined a copy of the contract of employment between the Complainant and the Respondent which guided their employment relationship.
15. Invoking the notice clause is one lawful way of terminating a contract of service. It is evident, in the instant case, that invoking the termination clause by the employer was an agreed mode of termination of the employment relationship. The termination letter dated 28th December 2015, addressed to the Complainant, outlines the reasons for the termination and what was payable to the Complainant upon termination.

16. I have already noted that the Employment law in Zambia, as amended, requires an employer to give reasons to the employee for the termination of that employee's contract. In this case the reasons for the termination were given in the termination letter. The termination was therefore lawful.
17. The second limb to be determined is whether the termination was wrongful. Wrongful dismissal entails a breach of the conditions of employment. On the evidence before me, no evidence has been led to suggest that the Respondent breached the contractual conditions of employment in effecting the termination. A mere assertion that the contract was curtailed by the termination before he had served the full term is not a reason to prove breach. If anything, the contract does make provision for termination before expiry date. The claim therefore also fails on this score. In the circumstances, I make the finding that the termination of the Complainant's contract was done in accordance with the terms of his contract and in accordance with applicable law.

Conclusion

The foregoing analysis and determination leads me to conclude and declare that the Respondent's termination of the Complainant's contract was lawful and not wrongful.

ORDERS

In the premises, I make the following orders:

- (i) *The claim for damages for wrongful and unlawful dismissal is dismissed.*
- (ii) *Each party to meet their own costs.*

DELIVERED THIS.....DAY OF JANUARY, 2018.



[Handwritten signature]
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HON. JUSTICE M. K. CHISUNKA