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Chansa Ng'onga v. Alfred H. Knight (Z) Limited Selected Judgment No. 26 of 2019

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Chansa Ng'onga v. Alfred H. Knight (Z) Limited Selected Judgment No. 26 of 2019
*Chanda Chungu*¹

Facts

An Appellant was employed as the Sectional Leader in the Lubricants Testing Department of the employer's business. He was subsequently promoted to the rank of Lubricant Testing Manager.

During his employment as Lubricant Training Manager, he was suspended due to being absent from work for five days without his supervisor's permission. Under the employer's Disciplinary Rules and Procedures, the penalty for a first offender was a written warning. This notwithstanding, he was dismissed after three weeks, without any formal charges raised against him and his letter of dismissal outlined that he was dismissed for offences for which he was not afforded any hearing.

The Industrial Relations Court held that the dismissal was carried out in violation of the rules of natural justice and held that the conduct amounted to wrongful dismissal. The court awarded the employee three (3) months' salary as damages. The employee appealed to the Supreme Court on the grounds that the award of three (3) months' salary was not sufficient on account of lack of evidence and the failure to mitigate his loss.

The employee's appeal to the Supreme Court was thus limited to the quantum of damages he was entitled to because of his wrongful dismissal.

Holding

The Supreme Court confirmed that the normal award of damages in employment matters is the notice period provided for in the contract of employment, or where no notice period is provided, the salary equivalent to reasonable notice.

In certain circumstances, the Supreme court guided that in addition to the salary equivalent to the notice period, the court may award an additional sum, particularly where the dismissal or termination is inflicted in a traumatic fashion. Where the court goes beyond the notice period, the circumstances must be special, and the employee must prove the loss he suffers to justify such an award.

In addition to the above, the Supreme Court confirmed an employee must prove that he mitigated his loss. In other words, the employee who suffers loss due to the unlawful or wrongful act of their employer, must take reasonable steps to mitigate losses.

The Supreme Court thereby confirmed that the employee was only entitled to the three (3) months' salary as damages as he had not proven more to justify a higher award.

Significance

The award of damages in employment matters has been the subject of much inconsistency, even by the Supreme Court. This case seeks to provide lucidity on the approach to be taken

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when determining the level of damages that an employee would be entitled to when the termination or dismissal is unlawful, unfair, or wrongful.

To achieve the purpose of providing clarity to the quantum of damages to be awarded in employment matters, Malila JS, as he was then, on behalf of the Supreme Court critically analysed all the relevant decisions in relation to damages from *Swarp Spinning Mills Plc. v. Sebastian Chileshe and Others*,² and *Joseph Chintomfwa v Ndola Lime Company Limited*³ to *Tom Chilambuka v Mercy Touch Mission*,⁴ *Dennis Chansa v. Barclays Bank Zambia Plc*⁵ and *First Quantum Mining and Operations Limited v Obby Yendamoh*.⁶

Following an overview of the above authorities, the Supreme Court confirmed that in the employment context, the normal measure of damages is the salary equivalent to the notice period. Where the contract of employment does not provide for a notice period, the normal measure of damages shall be the salary equivalent to reasonable notice.

The above is significant because the starting point when awarding damages is considering their purpose which is putting the innocent party in the position in which he would have been had the contractual obligations been performed. In the employment context, this is the notice period. The notice period reflects the loss that would ordinarily be suffered by an employee given that an employer is permitted to dismiss or terminate by giving notice.

Where an employee seeks to claim damages beyond salary equivalent to the notice period, Malila JS (as he was then) on behalf of the Supreme Court stated that:

In the present case the appellant seeks to be paid compensation for twenty-four or thirty-six-months which he has not worked for. It is of course fair for him to entertain such hope as long as he can show, as did claimants in cases where such awards were made, that the peculiarity of the circumstance and the loss he suffered merited such an award.

Malila JS, on behalf of the Supreme Court held that the court is permitted to deviate from the salary equivalent to the notice period or reasonable notice period where there are compelling circumstances to warrant such an award, such as the termination of employment or dismissal being inflicted in a traumatic fashion and the loss suffered by the employee justifies an award higher than the salary equivalent to the notice period.

The above is significant in reflecting the approach to determining the scope of the quantum of damages. The court guided that the factors to be used to determine what will be due to an employee who is subject to unlawful or wrongful conduct depends on the facts and varying individual circumstances in each case. In other words, the general principles on awarding damages should pay particular attention to the specific and peculiar nature of the events surrounding the termination or dismissal.

Lastly, the Supreme Court confirmed the principle of mitigating one's loss which entails taking reasonable action to minimise or reduce the amount of loss when you have suffered loss from breach of contract or unfair conduct. Malila JS on behalf of the Supreme Court held that

² (2002) ZR 23 (SC).

³ (1999) Z.R. 172 (S.C.).

⁴ SCZ Appeal No. 171/2012

⁵ SCZ Appeal No. 111/2011.

⁶ SCZ Appeal No. 206/2015.

It is a fundamental principle that any claimant will be expected to mitigate the losses they suffer as a result of an unlawful or wrongful act. A court will not make an award to cover losses that could reasonably have been avoided. Likewise, an employee is expected to search for other work.

Put simply, mitigating loss, means lessening or diminishing the effects and gravity of a serious or severe situation. Therefore, when courts award damages, the Supreme Court affirmed that they will only award the greatest possible loss an employee would face.

The guidance from the Supreme Court in this case is important given the lack of guidance on how courts awarded damages that ranges inconsistently over the years. The power of this judgment was the initiative taken by Justice Malila to provide clarity to an issue that has plagued employment matters before the court.

The approach of the Supreme Court in this case was to provide a framework for how damages are to be awarded. The starting point is that the injured party, in this case the employee, can never get more in damages than the extent of his loss, which in employment law is equivalent to the notice period. However, an employee can demonstrate special or peculiar circumstances that justify a higher award are specifically pleaded and proved. This is an important principle that provides clarity and guide the courts on the quantum to be awarded in cases of unfair or wrongful dismissal or termination.

In addition, an employee is expected to mitigate his/her loss by demonstrating that they searched for alternative work or source of income. An employee will only be expected to do what is necessary and the extent of their efforts, or failure will be used to determine the scope of damages to be awarded. The burden is only the employer to prove that the employee failed to mitigate his losses.

Conclusion

Therefore, the damages in employment matters awarded will depend on the extent to which the loss has been proven and what steps were taken to mitigate the loss. Although the court did not expressly outline the peculiar circumstances that justify a higher award, the reference to other leading judgments on damages gives some guidance on what these circumstances may be. These are where employee proves the following: -

- (a) that his/her employment was terminated in in traumatic fashion; (*Swarp Spinning Mills Plc. v. Sebastian Chileshe and Others*)⁷
- (b) was the result of the blatant infringement and/or disregard of their rights, the rules of natural justice and/or their contract of employment; (*Spectra Oil Zambia Limited v. Oliver Chinyama*,⁸)
- (c) caused mental anguish, inconvenience and stress; (*First Quantum Mining and Operations Limited v Obby Yendamoh*,⁹) and
- (d) the employee's future job prospects and the economy when awarding these damages. (*Dennis Chansa v Barclays Bank Zambia Plc*,¹⁰)

⁷ (2002) ZR 23 (SC).

⁸ CAZ Appeal No. 18/2018.

⁹ SCZ Appeal No. 206/2015.

¹⁰ SCZ Appeal No. 111/2011.

Therefore, by providing an overview of the circumstances, the guidance of the Supreme Court should be considered alongside the principles of other decisions to determine what an employee would be entitled to. This will depend largely on the particular circumstances and facts with respect to each employee.