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Standard Chartered Bank Plc v Celine Meena Nair [2019] ZMCA 221

*Ntemena Mwanamwambwa*¹ and *Milambo Chibbonta-Pupwe*²

Facts

The respondent was employed by Standard Chartered Bank Plc. (appellant) on 17 July 2006 as Head Legal/Company Secretary. On 28th July 2015 the respondent resigned from her employment alleging that she had been constructively dismissed by the appellant on account of acts and words of abuse suffered over the last 20 months (October 2013 – July 2015) at the hands of the appellant’s Managing Director and Chief Executive Officer (Mr Okai), which acts, and words were clearly meant and succeeded to frustrate and victimize and get rid of her. As a result, the respondent commenced an action before the Industrial Relations Division of the High Court.

The respondent stated that prior to her resignation she had informed the appellant of the acts of abuse by the managing director by email dated 9th June 2015. Upon receiving the respondent’s email of 9th June 2015 about her abuse and mistreatment by the managing director, she was approached and told to have a telephone conference with her line manager and was told a grievance process would be commenced and was told to stay home. A panel of two people was appointed to hear her complaint, Ms Sharon Heather from UK, and Mr Ferdie Peitserse from South Africa. On 2nd July 2015 she was interviewed by telephone and a transcript was prepared which she sent to Ms Sharon heather via email. On 23rd July 2015, Ms Heather in a follow up email told her that they spoke to some witnesses but could not interview the managing director because he would be away for two weeks. In response to Ms Heather’s email, the respondent had expressed concern that she would stay away from the office too long if she had to wait for his interview and return to the office. She also discovered that Mr Okai only took a day off from work from 28th July to 29th July 2015. The respondent took this to be a lie and did not see reason as to why Mr Okai could not be interviewed via telephone as they did with her. It was then that she decided to resign on 28th July 2015.

The Industrial Relations Division of the High Court held that, the failure by the appellant to timely act on the complaint by the respondent and the telling of fallacious tales as regards the stage of the process was enough to conclude that there was a breach of contract as they did not behave in a reasonable manner as would any employer. The breach was therefore sufficient for the respondent to discharge herself. Further the trial judge found that the last straw principle was equally applicable in the respondent’s case thus she resigned promptly without delay and met the constructive dismissal test. The trial judge awarded 36 months of gross salary as damages for constructive dismissal.

Holding

The Court of Appeal dismissed the appeal and therefore upheld the decision of the High Court and stated that implied terms of the contract are those not expressly stated in the contract. They are terms which are so obvious that they need not be stated. There was a breach of implied

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terms of mutual trust and respect as well as failure to handle the grievance procedure promptly by the employer which entitled the respondent to claim constructive dismissal.

Significance

The case is one of a kind and therefore significant for several reasons in the jurisprudence of Zambian Employment Law. The case highlights that the employer-employee relationship is one founded on the implied term of mutual trust and confidence³ which entails that both parties must accord each other due trust and respect regardless of status. Thus, the term is imputed into every contract of employment and imposed particularly on the employer who covenants not to unjustifiably subject the employee to the employer's conduct which deliberately or has the likelihood of causing serious damage to the trust and confidence between the parties being the very fabric of an amicable employer-employee relationship.⁴

In the case at hand, the court rightfully observed that the implied term of mutual trust and confidence was breached by the managing director targeting the respondent through his act of slamming the door during a meeting in full view of all present. Such conduct among other isolated and cumulative acts of bullying, harassment and victimization targeted at the respondent amounted to a show of disrespect by the managing director towards her, thus eroding the respondent's trust and confidence in the appellant bank.

Another pertinent issue brought to the fore in this case, is the fact that it is settled law in cases involving a complaint of constructive dismissal, that even a singular act of breach of an employment contract which pushes an employee to resign, will suffice in the claim succeeding. The court highlighted that any of the managing director's varying and singular acts of bullying, victimization or harassment of the respondent could have entitled her to resign and claim constructive dismissal.

Considering the peculiar facts of the case under discussion, it is unsurprising that the court had an opportunity to tackle the facet of vicarious liability of the appellant bank for the menacing acts of bullying, victimization, and harassment by the managing director which the respondent was subjected to. This is particularly important and should serve as a stern warning to employers to ensure that necessary workplace rules, codes and policies are put in place to mitigate and manage the risks of such liability arising if left unchecked.

The Court of Appeal also addressed its mind to the cumulative series of events suffered by respondent at the hands of the managing director, all of which the which prompted her to resign. The court thus took the view that the last straw of these cumulative events was the appellant's failure to conclude and adhere to its own grievance procedure at the instance of the respondent. This in-itself was a clear and blatant breach of the implied term to promptly and reasonably handle grievances raised by an employee.⁵ This is significant as it illustrates that employers are mandated at common law to treat complaints of this nature with the seriousness they deserve. In fact, in the case of *Singogo*, the Supreme Court has added its voice to the above stated principle by stating that malice could be implied where an employer fails to investigate and take appropriate action when an employee raises a grievance or complaint against a superior.⁶

Furthermore, due to the peculiar facts of the case, the Court of Appeal distinguished it with the leading case of *Ng'uni*⁷, by restating the classic test for constructive dismissal stated in the

³ *Isle Of Wight Tourist Board (1976) IRLR 413; Council of Scientific and Industrial Research v Figen (1996) 17 1LJ 18.*

⁴ *Council of Scientific and Industrial Research v Figen (1996) 17 1LJ 18.*

⁵ *Western Excavating (ECC) Limited v Sharp (1978) IRLR.*

⁶ *Chilanga Cement PLC v Kasote Singogo SCZ No. 13 of 2009.*

⁷ *Kitwe City Council v William Nguni (2005) ZR 57 (SC).*

latter and many other cases. Thus, borrowing from the English case of *Western Excavation*⁸, it is settled law that the test for constructive dismissal is that ‘an employee is entitled to treat him or herself constructively dismissed when an employer’s conduct or behaviour fundamentally breaches an employment constructive leaving the employee with no choice but to resign’. The case at hand, thus adopted the classic test but restated it to suit the peculiar facts of the case, as follows:

an employee is entitled to treat him or herself constructively dismissed when an employer’s conduct or behaviour fundamentally breaches an employment constructive or generally makes the life of the employee unbearable within the work place, leaving the employee with no choice but to resign within a reasonable period of time.

The restated test is significant as the court emphasized that the breach in question must go to the root of the contract so that an employee deems it impossible to carry on with the employment relationship due to the toxic nature of the relationship. As earlier stated, the fundamental breaches at the heart of this case were the failure by the appellant to promptly follow its own grievance procedure code as well as the breach of the implied duty of trust and confidence which arose vicariously through the managing director’s acts of bullying, harassment, and victimization of the respondent. The latter acts thus point to the toxic nature of the appellant's working environment to which the responded was subjected, besides it amounting to the breach of the implied duties.

The time factor was key in the restated test as it illustrates an employee’s intolerance to the employer’s unwarranted conduct. In this case, the Court of Appeal accepted a time frame of 20 months spanning from October 2013 to July 2015 when she resigned, as being a reasonable and sufficient to prove her intolerance of the managing director's conduct. Thus, entitling her to claim constructive dismissal.

Conclusion

The decision in this case, sets a clear and stern tone in cases of constructive dismissal bordering on toxicity within the working environment. Thus employers are put on notice to adhere to their own grievance procedures particularly in cases involving bullying, harassment and victimization such as the *Nair* case⁹, lest malice be implied for such failure on their part, as affirmed in the *Singogo* case.¹⁰

⁸ Ibid, supra note 5.

⁹ Standard Chartered Bank Plc v Celine Meena Nair [2019] ZMCA 221.

¹⁰ Ibid, supra note 6.