

**IN THE SUPREME COURT OF ZAMBIA**  
**HOLDEN AT NDOLA**  
(Civil Jurisdiction)

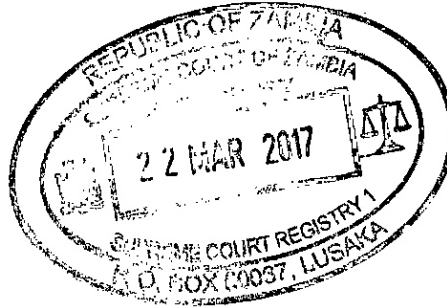
**Appeal No. 122/2014**

**BETWEEN:**

**VINCENT CHIMUKA**

**AND**

**STANBIC BANK ZAMBIA LIMITED**



**APPELLANT**

**RESPONDENT**

**Coram: Mambilima, CJ, Kaoma and Musonda, JJS**  
**on 7<sup>th</sup> March, 2017 and 10<sup>th</sup> March, 2017**

For the Appellant: N/A

For the Respondent: Mr. Nchima Nchito, S.C., Nchito & Nchito Associates

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## **JUDGMENT**

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**MUSONDA, JS, delivered the Judgment of the Court.**

**Cases referred to:**

- 1. The Attorney-General -v- Marcus Achiume [1983] Z.R. 1**
- 2. Attorney-General -v- Jackson Phiri (1988-89) Z.R. 121**
- 3. Muyambango -v- ZESCO (2006) Z.R. 22**
- 4. Blackson Phiri -v- Bank of Zambia: SCZ Appeal No. 130 of 2004**
- 5. National Breweries Limited -v- Mwenya [2002] Z.R. 188**
- 6. Zambia National Provident Fund -v- Chirwa [1986] Z.R. 70**

**Legislation referred to:**

**Income Act Cap. 323 of the Laws of Zambia.**

The appellant has appealed to this court against the entire judgment of the Industrial Relations sitting at Lusaka on 23<sup>rd</sup> April, 2014 whereby that court dismissed the appellant's complaint in terms of which he had sought a variety of reliefs against the respondent including damages, payment of his pension, bonus, lost earnings/allowances etc. consequent upon his dismissal by the respondent.

The history and background facts surrounding the complaint in question are as plain as can be.

The appellant was employed by the respondent as an auditor on 5<sup>th</sup> August, 1997. On 27<sup>th</sup> November, 2008, the appellant was laterally appointed to the position of Manager, Area Operations.

In his position as Manager, Area Operations, the appellant's key accountabilities included risk management which entailed identifying adverse trends to avoid losses, training, coaching and guiding loss management teams in the respondent's business units in order to influence loss prevention and promote appropriate controls.

Sometime around the beginning of 2012, the respondent, acting in liaison with the Standard Bank Africa Information Technology

Team, undertook a clean-up exercise on the respondent's interest accrual accounts. During that exercise, 4 suspicious transactions involving ZMK2.8billion which had been processed at the respondent's Matero Service Centre, Lusaka, were identified. The respondent subsequently undertook investigations which revealed that, a Ms. M. Mukupa, who was the Head of the Respondent's Matero Service Centre had been stealing or misappropriating money at this branch between 14<sup>th</sup> October, 2011 and 27<sup>th</sup> December, 2011.

During the investigations in question, the respondent established that the appellant had been responsible for branch quarterly surprise cash checks for the respondent bank's Matero Service Centre.

The investigations further established that, in spite of having been fully aware of his responsibilities during the quarterly surprise cash checks for Matero Service Centre, the appellant had not been diligent in the discharge of those responsibilities. For instance, on 7<sup>th</sup> October, 2011, the appellant had visited Matero Service Centre and had signed the cash register of the Service Centre indicating that he had done a physical cash surprise check and certified the register

and cash on hand as having been in a balanced position when, in actual fact, there had been a cash shortfall in the vault.

On 24<sup>th</sup> February, 2010, the respondent suspended the appellant from duty in order to have him help **“...with investigations into alleged financial irregularities.”**

On 3<sup>rd</sup> April, 2012 the respondent preferred disciplinary charges against the appellant. The charges were set out in a letter which conveyed them in the following terms:

***“3<sup>rd</sup> April, 2012***

***Mr. Vincent Chimuka  
C/o Stanbic Bank Zambia  
Operations  
Lusaka***

***Dear Vincent,***

**DISCIPLINARY CHARGES**

***We refer to our earlier letter to you dated 24<sup>th</sup> February 2012 in which you were advised of your suspension from work. Following further investigations, you have been charged with the following offences:***

- 1. Negligence of duty resulting in the bank or employee or any person having business with the bank in financial loss (Clause 3.16 Schedule of offences of the Grievance and disciplinary code of Non-Unionised staff of Stanbic bank Zambia Limited).***



*Between August 2011 and December 2011 you failed to conduct proper spot checks of cash verification against the register in the vault at Matero Service Centre thereby resulting into financial loss of K2.8b, property of the bank.*

**2. Dishonest conduct or falsification of bank records with intent to mislead the bank (at Clause 4.8 Schedule of offences of the Grievances and Disciplinary Code for Non-Unionised staff of Stanbic Bank Limited).**

*On 6<sup>th</sup> August 2011 and 7<sup>th</sup> October 2011 you falsified in the vault register at Matero Service Centre by indicating that you conducted spot vault cash verification against the register on 5<sup>th</sup> August 2011 and 7<sup>th</sup> October 2011 respectively. You had further indicated that the cash was balanced in the vault when in actual sense there was a shortfall of cash in the vault by then. This is tantamount to misleading the bank.*

***You are required to respond to the above charges within 5 days of receipt of this letter.***

***Kindly acknowledge receipt of this letter by signing on the copy.***

***Yours sincerely,***

***Raymond Knott***  
**Head-Operations**

***CC: Head – Human Resources***  
***Head – Risk & Compliance”.***

Subsequently, the appellant responded to the charges and a disciplinary hearing was conducted by the respondent's Disciplinary Committee which culminated in the appellant being found guilty of the two charges. In consequence, the Disciplinary Committee

unanimously pronounced a dismissal verdict against the appellant in accordance with the respondent's Disciplinary Code.

On 11<sup>th</sup> June, 2012, the Chairman of the respondent's Disciplinary Committee advised the appellant about his dismissal and the benefits which were due to him consequent upon this development. The Committee Chairman also informed the appellant that he had the right to appeal to the respondent's Managing Director against the decision of the Disciplinary Committee. The appellant subsequently appealed to the respondent's Managing Director who upheld the decision of the Disciplinary Committee. Following this development, the appellant instituted legal proceedings in the Industrial Relations Court by way of a Notice of Complaint which was subsequently amended with leave of the court on 21<sup>st</sup> February, 2013. In his amended Complaint, the appellant sought the following:

- “ (i) Damages for wrongful dismissal**
- (ii) An Order that the said dismissal of the Complainant was wrongful**
- (iii) Payment of (his) pension**
- (iv) An Order that the complainant is consequently entitled to payment of:**
  - (a) Bonus for financial year 2011 at the rate of 220% of his revised salary as at March 2012 pursuant to the Managing Director's bonus memo dated 27<sup>th</sup> March 2012.**

12. That sometime around December 2011, the Bank discovered some financial irregularity at the said Matero Branch involving theft of cash.
13. That the said discovery of financial irregularity led to my suspension as aforesaid and subsequently I was charged with the offence of negligence and dishonest conduct.
14. That I exculpated myself as aforesaid and later discovered that the said financial irregularities involved some employees in the branch through abuse of the expense account whose conduct and control was outside my job description.
15. That the said abuse of the expense account which operated on system with Head Office was not part of my surprise or spot check as the same is system generated and monitored at Head Office.
16. That it transpired to me that Branch Management were involved in a scam of ordering cash from G4S Cash Centre Head Office but the same was not recorded in the cash register or made available in the vault thus surprise or spot checks could not discover such as irregularity because the entries were passed to expense account which same was monitored by other Officers at Head office.
17. That in the course of investigations of the employees from the Branch, those involved confessed to the offences and the Law Enforcement Officers confiscated money and property from them.
18. That the respondents have in their custody confessions from those involved which same exonerated me from the offences but this was ignored by management.
19. That by matters aforesaid, the charges leveled against me leading to my dismissal are a smoke screen of malicious persecution aimed at removing me from the Bank for reasons known to the respondent.

**20. That from matters aforesaid, it is clear that my dismissal is wrongful, malicious and devoid of justification whatsoever"**

In its Answer to the appellant's Complaint, the respondent denied having wrongfully or unfairly terminated the appellant's employment and maintained that the appellant's employment was lawfully terminated by way of dismissal and in accordance with the terms and conditions which had been attached to his employment. The respondent accordingly denied that the appellant was entitled the remedies which had been set out in his Notice of Complaint or to any of the said remedies.

At the hearing of the Complaint, the appellant testified on his own behalf but did not call any witnesses while the respondent called two witnesses who testified on its behalf.

In his oral testimony, the appellant told the court below that one of his duties as Operations Manager was to conduct spot checks in branches (of the respondent) on a quarterly basis. He further testified that once he had done the spot checks for treasury cash, he would sign a certificate in which he would state any anomaly that would be revealed by such spot checks. Aside from identifying any anomalies, he would meet with the Branch Management team, show them any anomaly that will have been identified by him and

thereafter discuss his suggested action in order to remedy the anomaly.

The appellant also confirmed that, aside from suggesting or recommending remedial action or measures for any anomaly that he would have identified, it was his duty to ensure that any remedial action recommended by him was implemented and such implementation demonstrated to him.

The appellant also testified that he was not the only one who was undertaking spot checks because even individual branches of the respondent did their own monthly spot checks.

In relation to the Matero Service Centre experience, the appellant informed the court below that he did undertake a spot check at Matero Service Centre but maintained that the spot check exercise for treasury cash took either of two options, namely, that he could do it by bundle count or by way of note by note count.

He further testified that on one particular spot check at Matero, both the physical cash and the register balanced and that there was no anomaly.

However, the appellant acknowledged that he subsequently came to learn about the theft involving K2.8 billion at the same Centre.

The appellant also complained that his dismissal had been unwarranted and that he had been discriminated against and unfairly treated by the respondent.

When he was cross-examined, the appellant conceded that he did not count the money on all the occasions that he undertook the spot checks and that, in fact, he did not even visit Matero Service Centre on the dates that he had indicated in the register in the vault.

Following the closure of the appellant's case, the respondent called two witnesses who testified on its behalf.

Stanley Shaninga ("RW1") was the first witness to testify on behalf of the respondent.

He told the court below that he was the Financial Crime Control Manager at the respondent Bank and that he had investigated the circumstances under which K2,800,000,000.00 went missing from Matero Service Centre in 2011. He told the Court that during his investigations, he interviewed Margaret Mukupa, the Head of that Centre who informed him that she was the one who had been stealing that money and that she started doing so in June 2011 and that by 14<sup>th</sup> October 2011, the amount she had stolen had risen to K1,350,000,000.00. RW1 further testified that when Mukupa received notification that there was to be an audit at her Centre she

ordered a sum of K1,350,000,000.00 to replace all the stolen cash. RW1 further testified that Margaret Mukupa informed him that whenever the appellant visited her Centre for the purpose for the purpose of the spot check exercise, he would not physically count the cash in the vault but would request for the register where he would endorse that he had physically counted the cash and found it to be correct.

RW1 also told the court that he interviewed Andrew Daka, Mukupa's co-custodian at Matero Service Centre, who told him that he did not recall the appellant entering the vault to count the cash therein and that the appellant could not have accessed the vault because he, Andrew Daka, had the second set of keys with him and would be busy replenishing tills each time the appellant visited the Centre. RW1 also testified that he was surprised at how the appellant, who was a senior member of staff, failed to notice that there had been a cash shortage if, indeed, he had done the spot checks on the dates in question. RW1 further testified that an experienced eye such as the appellant should have been able to see that the amount of cash which had been endorsed in the register could not have been the same as what was in the vault. It was RW1's further evidence that had the appellant done a proper check on 7<sup>th</sup>

October 2011, the respondent would have averted the other three illicit transactions by Margaret Mukupa which resulted in the respondent losing a total sum of K2,800,000,000.00.

Ronald Chanje ("RW2") was the respondent's second witness. He told the trial court that he was the Head-Employee Relations at the respondent bank and that he was part of the disciplinary committee that heard the appellant's case at the respondent bank. He also told the court that, during the hearing of the appellant's case, all the disciplinary procedures as provided in the bank's disciplinary code were followed to the letter. He also informed the court that, consequent upon the guilty verdict which had been entered against the appellant, the respondent decided to withhold his pension with a view to having the said pension applied towards setting-off the same against the financial loss which the respondent had suffered as a result of the appellant's proven negligence and dishonest conduct in the discharge of his responsibilities as an employee of the respondent which had resulted in or contributed to the financial loss which the respondent had suffered. RW2 testified in this regard that the respondent had applied to the Pension Trustees who were managing the appellant's pension to withhold the pension and allow the respondent to off-set the same against the loss in question and that



it was the Trustees that had made the decision to withhold the pension.

The trial court considered both the documentary and oral evidence which had been deployed before it in the context of the Complaint as formulated and presented before it and came to the conclusion that each of the appellant's claims as contained in the complaint lacked merit and dismissed them in their entirety.

The appellant has now appealed against the entire judgment of the court below on the basis of the following grounds which are set out in the memorandum of appeal:

- 1. The learned trial Judge erred in law and in fact by holding that it is not the function of the court to consider the merits of the evidence at the hearing when in fact the court conceded that it is the sufficient substratum of facts which support the disciplinary measures thus imperative for the totality of evidence on record to be considered.**
- 2. The court erred in law and fact by holding that the internal tribunal complied with rules of natural justice when in fact consideration was given to detrimental allegations unknown to the appellant and on which he had no opportunity to exculpate himself.**
- 3. The court misdirected itself by holding that the Pension Rule in issue were scrutinized and approved by the Commissioner General of Zambia Revenue Authority when no such evidence was before the court and the appellant was not privy to that process.**

**4. The trial court misdirected itself in law by holding the appellant bound by the Pension Rules which in fact such rules were in conflict with the Income Tax Act Cap 323 of the Laws of Zambia.**

The appellant and Counsel for the respondent filed their respective Heads of Argument to buttress the positions which they had respectively taken in the appeal.

In relation to the first ground of appeal, the gist of the argument by counsel for the appellant around this ground was that the trial court erred when it ignored the valuable and favourable evidence which had been laid before the court on behalf of the appellant. Counsel contended that it was an error for the trial court to have suggested, in effect, that the appellant was negligent when he failed to detect the theft of the K2.8 billion at the respondent's Matero Service Centre by the Head of that Centre during his surprise spot checks. According to the appellant's counsel, the conclusion of the court below ignored the fact that surprise spot checks by the appellant could not have detected the loss of the money because each time the money was stolen, it was replaced to conceal the shortage. Counsel then drew our attention to our decision in the case of **The Attorney-General -v- Marcus Achiume**<sup>1</sup> in which we pointed out the circumstances when, as an appellate court, we would interfere with

findings of fact by a trial judge. We also noted in the same case that an unbalanced evaluation of the evidence, where only the flaws of one side but not of the other are considered, is a misdirection which no trial court should reasonably make and entitles the appeal court to interfere.

We were, accordingly, urged to interfere with the approach of the trial court on the aspect which we have just highlighted above.

In response to the first ground of appeal, learned counsel for the respondent contended that the trial court was on firm ground when it took the position that –

**“If the correct procedures were followed, the court will only concern itself with whether or not there was a sufficient substratum of facts established to support the disciplinary measures taken.”**

To fortify his argument, counsel for the respondent cited our decision in the case **Attorney-General -v- Jackson Phiri**<sup>2</sup> where our brother, Ngulube DCJ (as he then was) observed that:

**“The court ought to have regard only to the question whether there was power to intervene, had valid disciplinary powers and if so, whether such powers were validly exercised.”**

In relation to the matter at hand, Counsel for the respondent argued that the court below examined the disciplinary charges which had been preferred against the appellant, namely, negligence of duty

resulting in the respondent's financial loss and dishonest conduct or falsification of bank records with intent to mislead the bank and came the conclusion that the appellant had not performed the tasks which had been assigned to him diligently and was, therefore, negligent. According to the respondent's counsel, the trial court was also spot on when it found that the appellant's decision not to count the money note by note in preference to doing a bundle count during his spot checks pointed to negligence on the part of the appellant which had resulted in the respondent losing a lot of money.

The respondent's Counsel further noted in his arguments contesting the first ground of appeal that the appellant did, in fact, admit in his evidence in chief that had he been physically counting the cash it would have been possible for him to discover that some of the money was missing.

In addition to the case of the **Attorney General -v- Jackson Phiri<sup>2</sup>** earlier cited in this judgment, counsel for the appellant cited our decision in the case of **Muyambango -v- ZESCO<sup>3</sup>** to support his contention that the trial court was on firm ground when it determined that the respondent's disciplinary committee had sufficient material on which to anchor its decision to dismiss the appellant on account

of the disciplinary offences which he had committed. Counsel accordingly urged us to dismiss the first ground of appeal.

At the hearing of the appeal, the appellant did not attend but filed a Notice of Non-attendance pursuant to Rule 69 of the Supreme Court Rules, CAP.25 and indicated that he would rely on his filed Heads of Argument. However, Mr. Nchima Nchito, S.C, the learned counsel for the respondent attended the hearing. Mr. Nchito, SC, informed us that he was relying on the Heads of Argument which he had filed but indicated that he desired to augment his written arguments with a few brief points in respect of each of the grounds of appeal.

In regard to the first ground of appeal, Mr. Nchito, SC, observed that the appellant appeared to have misapprehended the nature of the proceedings which were conducted or held both before the Court below as well as before us. According to State Counsel, the appellant had been treating the Court proceedings in question as if they were of the nature of appeals. Counsel noted that the appellant should appreciate that this court, like the court below, is never concerned with the merits or otherwise of the disciplinary tribunal's decision but is only concerned with the procedures which the disciplinary

tribunal was required to follow and whether the same had been followed or adopted.

With regard to the second ground of appeal, Mr. Nchito, SC, observed that although the appellant had contended in the court below that the counting of the money during the surprise spot checks at the respondent's Matero Service Centre could take either of two forms namely, by bundle count or note by note count, the appellant did not demonstrate that he had actually counted the money either way. Counsel argued further that, had the appellant counted the money he would have established that there had been a misappropriation of money at Matero Service Centre.

With regard to the third ground of appeal, Mr. Nchito, SC, argued that the law did not prohibit the measure which the respondent had taken in relation to the appellant's pension moneys.

We are grateful for the arguments which were canvassed before us. We propose to address each ground of appeal in the same order in which they were argued before us.

With regard to the first ground of appeal, we have carefully and anxiously considered the arguments which have been placed before us on behalf of the two contestants to this appeal in so far as they relate to this ground.

We wish to immediately observe that we have been at great pains to distill the meaning, let alone, to make sense of this first ground of appeal which we have found to represent an unclear, incoherent and somewhat obscure hotchpotch. Be that as it may, and doing the best we can, we have deemed this ground as representing a generalized attack upon the approach which the Court below had adopted for the purpose of resolving the same.

The court below had signaled the approach which it had adopted when it said the following at pages J.18 to 19 of its judgment:

**“We believe that the respondent... was able to establish that the [appellant] did not perform his task diligently and efficiently and failure to do so constituted negligence. The bottom line as far as [this] court is concerned is whether there was sufficient substratum of facts to support the disciplinary measures. After satisfying ourselves as a court that the internal tribunal complied with the rules of natural justice, and that they acted reasonably, it is not our function to interpose ourselves”.**

After revealing its mind in the manner we have just quoted above, the trial court then went on to cite our decision in **Attorney-General -v- Jackson Phiri**<sup>2</sup> where Ngulube, DCJ (as His Lordship then was) said the following at page 124:

**“...It was incumbent upon the learned trial commissioner to have regard to the general principle... that the court cannot be required to**

sit as a court of appeal from the decision of the Public Service Tribunal to review its proceedings or to inquire whether its decision was fair or just or reasonable. In a case such as this, the court ought to have regard only to the question whether there was power to intervene, that is to say, the question whether the Public Service commission had valid disciplinary powers and, if so, whether such powers were validly exercised”.

Having drawn inspiration from our decision in **Attorney-General -v- Phiri<sup>2</sup>**, the court below concluded as follows:

**“In this case the offence of negligence of duty and dishonest conduct and/or falsification of bank records with intent to mislead the bank were established by the Disciplinary Committee. After a critical analysis of the evidence before us we find and hold that there was sufficient substratum of facts for the respondent to base its disciplinary measure.**

**We therefore hold that the complainant’s claim for wrongful dismissal lacks merit as the dismissal was justified.”**

We wish to acknowledge and point out that our examination of the record revealed ample evidence which pointed to the appellant’s obvious failings and the appropriateness and justifiability of the disciplinary measures which the respondent had invoked to address the same. It is also pertinent to observe that the appellant was fully alive to his responsibilities, so far as the same were relevant to this



matter. We say this because, in his own evidence-in-chief, the appellant told the court below the following:

**"... In summary, in my role, I was the link between the branches and Head Office in respect of operations.... One of my duties was to conduct spot checks in branches. What was involved was that quarterly, I would do routine checks on dates unannounced to the branches. This was once every three months. The spot checks were of treasury cash. Once I had done the spot checks I would ... sign certificates. Certificates are signed in such a way that if there is anything amiss or an anomaly I would state it. Besides stating the anomaly, I would meet with the Branch Management and show them and discuss the suggested action to remedy the anomaly. Besides recommending the remedy, I would ensure that [it] is implemented and evidence given to me..."**

In our view, the above evidence very clearly spoke to the appellant's appreciation of his role, so far as the same related to the matter at hand.

Having regard to the evidence which was laid before the trial court in the context of the manner in which the appellant had discharged his role, it can scarcely be doubted that the appellant fell gravely short of the demands of that role. For the removal of any doubt, the record revealed the following damning evidence (by RW1, the respondent's key witness) in relation to the appellant's discharge of the subject responsibilities:

**“[Margaret Mukupa] said between June and October, [2011] the Area Operations Manager Vincent Chimuka [the appellant] visited the Branch on 6<sup>th</sup> August, 2011 and on 7<sup>th</sup> October, 2011. She went on to say that [the appellant] had too much trust in her to the extent that he would not ...perform the actual physical counting of the cash but would just request for the cash register where he would just endorse that he had counted the cash and found it to be correct... I also called the other co-custodian, Andrew Daka, who also indicated that he did not remember seeing [the appellant] counting the vault cash...**

**....**

**I became puzzled that [the appellant] visited the branch in August and October, when there was that [cash] shortage [and yet] he did not pick the discrepancy or detect the theft...”.**

Quite apart from the verbatim evidence which has been reproduced above, evidence was placed before the trial court which pointed to anomalous transactions at the Matero Service Centre which the appellant was expected to detect but failed to do so including the presence of vouchers which reflected that huge sums of cash had been received by the two custodians at the Centre and yet there was no single entry made in the Centre’s cash register to reflect that such cash had been received at the Centre.

With regard to the disciplinary measure which the respondent invoked, the trial court took the view that there was a sufficient substratum of facts which had justified that measure. The court noted that it had satisfied itself that the respondent’s Disciplinary

Committee had complied with the rules of natural justice and had acted properly.

For our part, we entirely agree with the position which the trial court took. Indeed, there was no question that the appellant had committed obvious transgressions under the respondent's Disciplinary Code which had legitimately attracted both the disciplinary charge which was preferred against the appellant as well as the disciplinary proceedings which had been set in train against him. There was also no question that the disciplinary proceedings which had ensued against the appellant were conducted in accordance with the applicable rules in that the appellant was appropriately charged; was given an opportunity to exculpate himself and was subsequently subjected to an exhaustive disciplinary hearing during which the appellant had even enjoyed the latitude of objecting to the involvement of persons that he had not been comfortable with either as members of the Disciplinary Committee or as witnesses. The appellant was found guilty by the respondent's Disciplinary Committee which pronounced the verdict of dismissal.

After the Disciplinary Committee of the respondent heard and unanimously pronounced the dismissal verdict against the appellant, he was advised of his right to appeal to the respondent's Managing

Director which right the appellant had duly exercised by launching his appeal to the Managing Director who, in turn, had constituted a three-member 'Appeals Committee' which, after conducting another extended hearing, upheld the verdict of the Disciplinary Committee.

Like the trial court, we found nothing in the record which was suggestive of procedural impropriety. In short, our perusal of the record confirmed that the Disciplinary Code of the respondent was followed while the punishment which the respondent's Disciplinary Code prescribed for the appellant's transgressions was beyond controversy.

On the basis of countless decisions of this court, including those which have been specifically cited in this judgment, that is, **Attorney General -v- Jackson Phiri<sup>2</sup>**, **Muyambango -v- ZESCO<sup>3</sup>** and **Blackson Phiri -v- Bank of Zambia<sup>4</sup>**, we have no difficulty in reaching the conclusion that the first ground of appeal cannot possibly succeed.

With regard to the second ground of appeal, counsel for the appellant advanced the short point that in inflicting the punishment which the respondent had inflicted upon the appellant, account was taken of adverse allegations upon which the appellant had no opportunity

to be heard. To this extent, the appellant's counsel contended that natural justice was denied to the appellant.

For his part, counsel for the respondent reacted to the second ground of appeal by refuting the appellant's suggestion that the respondent's disciplinary committee had denied him the benefit of natural justice or that any rule of this concept was violated in relation to him. The respondent's counsel contended that, contrary to the appellant's counsel's assertion, the appellant was fully heard in relation to all the allegations that he had been facing; he was afforded a full opportunity to defend himself and none of the persons who were involved in the disciplinary hearing had an interest in the proceedings, or were biased against the appellant. Counsel for the respondent closed his arguments in rebuttal by referring to the following holding in our judgment in **National Breweries Limited -v- Mwenya**<sup>4</sup>:

**"where an employee has committed an offence for which can be dismissed, no injustice arises for failure to comply with the procedure stipulated in the contract and such an employee has no claim on that ground for wrongful dismissal or a declaration that the dismissal is a nullity."**

We have carefully considered this ground of appeal in the context of the arguments which were canvassed around the same on behalf of the two parties to the appeal.

Having examined the record and, in particular, the portion thereof which deals with the proceedings of the disciplinary committee, we do, quite frankly, consider this second ground of appeal to be something of a red herring.

One of the things which we noted from the minutes of the proceedings of the disciplinary committee and the appeals committee in question was the apparent latitude which the appellant was accorded to the extent of even successfully objecting to the participation of persons that he was uncomfortable with whether as members or as witnesses.

Leaving aside the casual observation which we have made above, we consider that our decision in **National Breweries Limited -v- Phillip Mwenya**<sup>5</sup> which was cited by counsel for the respondent adequately resolves the second ground of appeal. If further comfort be required, our decision in the case of **ZESCO Limited -v- David Muyambango**<sup>3</sup> not only adopted that oft-quoted passage which had its genesis in **Zambia National Provident Fund -v- Chirwa**<sup>6</sup> (for which we earlier quoted when we referred to our judgment in

**National Breweries Limited -v- Philip Mwenya<sup>5)</sup>** but also made the following observations (at page 32):

**“From the evidence on record we are also satisfied that the complainant was made aware of the charges that were leveled against him and that he was given an opportunity to exculpate himself as evidenced by the minutes of the meeting of the Disciplinary Committee... in this case from the evidence on record we are satisfied that the necessary disciplinary power existed and that it was exercised in due form as all the procedures were followed.”**

In the context of the second ground of appeal, it does seem to us that our observations in **ZESCO -v- Muyambango<sup>3)</sup>** stand valid. Accordingly, we would dismiss the second ground of appeal.

We now turn to consider the last two grounds of appeal namely, grounds 3 and 4, which counsel for the appellant argued together in their heads of argument.

The appellant’s counsel’s brief arguments around grounds 3 and 4 were to the effect that it is both wrongful and unlawful for the respondent to withhold the pension benefits which were due to the appellant without due process of the law.

For his part, counsel for the respondent argued that the trial court was right in upholding the legality of the respondent’s Pension Scheme and the appropriateness and lawfulness of the action which the respondent had taken to withhold the appellant’s pension by way

of setting off against the K2.8 billion loss which the respondent had incurred as a result of the appellant's negligence.

We have examined the record and considered the arguments of counsel around the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal and agree with counsel for the respondent that there was nothing illegal or unlawful about the respondent's Pension Scheme as an approved pension scheme under the **Income Act Cap. 323 of the Laws of Zambia**.

We also agree with counsel for the respondent that it is strange and odd indeed that in one breath the appellant should be asserting that the pension scheme in question is illegal while in another breath he is seeking to benefit under the same.

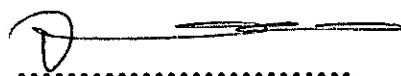
In truth both grounds 3 and 4 are without merit and stand dismissed.

The net effect of the foregoing is that the appeal has failed in its entirety.

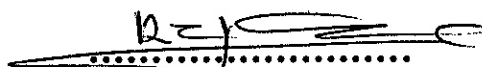
With regard to the issue of costs, we are mindful that in matters of the nature of appeals from the Industrial Relations Court, this Court has normally adopted the traditional reluctance of that Court against ordering costs against employees notwithstanding the outcome of the litigation. However, in this appeal, we shall follow the



position we had adopted in **Blackson Phiri -v- Bank of Zambia**<sup>4</sup>  
where costs had followed the event.



.....  
**I.C. MAMBILIMA**  
**CHIEF JUSTICE**



.....  
**R.M.C. KAOMA**  
**SUPREME COURT JUDGE**



.....  
**M. MUSONDA**  
**SUPREME COURT JUDGE**