

**THE COURT OF APPEAL OF ZAMBIA**

**APPEAL 102/2020**

**HOLDEN AT LUSAKA**

(Civil Jurisdiction)



**BETWEEN:**

**MP INFRASTRUCTURE ZAMBIA LIMITED**

**APPELLANT**

**AND**

**MATT SMITH**

**1<sup>ST</sup> RESPONDENT**

**KENNETH BARNES**

**2<sup>ND</sup> RESPONDENT**

***Coram: Makungu, Sichinga and Siavwapa JJJA***

***On 17<sup>th</sup> November, 2021 and 21<sup>st</sup> April, 2022***

*For the Appellant: Mr. M. Chisunka of Nkusuwila, Nachalwe Advocates*

*For both Respondents: No appearance*

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## **JUDGMENT**

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**Makungu JA**, delivered the Judgment of the Court.

### **Cases Referred to;**

1. *Redrilza Limited v Abuld Nkazi & others SCZ Judgment No.7 of 2011*
2. *Care International Zambia Limited v Misheck Tembo SCZ Appeal No. 57 of 2016 (2018) ZMSC 369*
3. *Giles Yambayamba v The Attorney General and National Assembly SCZ/26/2015*
4. *Chilanga Cement Plc v Kasote Singogo SCZ Judgment No.13 of 2009*
5. *Dzekedzeke v Zambia Telecommunications Company Limited Comp No.349/2016 (2017)*
6. *Maamba Collieries Limited v Douglas Siakalanga and others SCZ Appeal No. 12 of 2004*
7. *Zambia Revenue Authority v Chintu Kanga SCZ Appeal No. 219 of 2015*
8. *Swarp Spinning Mills v Sebastian Chileshe and 30 others (2002) Z.R 23*

### **Legislation Referred to;**

1. *Industrial Relations Court Rules, Chapter 44 of the Laws of Zambia.*
2. *The Employment Act, Chapter 268 of the Laws of Zambia*
3. *The Judgments Act, Chapter 81 of the Laws of Zambia*

## **1.0 INTRODUCTION**

1.1 This is an appeal against the judgment of E. Mwansa J of the Industrial Relations Division of the High Court delivered on 20<sup>th</sup> February, 2020 in favour of the 2<sup>nd</sup> respondent. Both respondents have cross - appealed.

## **2.0 BACKGROUND**

2.1 The background of this appeal is that the 1<sup>st</sup> and 2<sup>nd</sup> respondents, who were 1<sup>st</sup> and 2<sup>nd</sup> complainants respectively in the court below, commenced an action against the appellant (respondent in the court below) by way of complaint supported by an affidavit; pursuant to **section 85 (4) of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia** on the following grounds.

- a) The 1<sup>st</sup> complainant was employed by the respondent as Country Manager on a fixed-term contract on 15<sup>th</sup> January, 2015. The 2<sup>nd</sup> complainant was also employed by the respondent but as Project manager for HIS RMS Installation with effect from 9<sup>th</sup> April, 2015 on a fixed-term contract.
- b) On 5<sup>th</sup> May, 2016 the respondent terminated the complainants' contracts of employment for alleged unsatisfactory performance without affording them an opportunity to be heard and without complying with the provisions of the Grievance and Disciplinary Procedures contained in the Company Handbook. In short, the complainants were not heard.

- c) That the company did not raise any issue of unsatisfactory performance during the term of their respective employment contracts and if they felt it was an issue, then they condoned it and could not later use the same as a ground for termination.
- d) That the termination was wrongful and unlawful as it was done contrary to **section 36 of the Employment Act Chapter 268 of the Laws of Zambia as amended by the Employment Amendment Act No. 15 of 2015.**

2.3 The complainants sought the following reliefs:

- a) An order that the termination of their fixed-term contracts of employment by the respondent was wrongful and unlawful.
- b) An order for payment to each of the complainants as compensation 24 months' salary as damages for wrongful/unlawful termination.
- c) Damages for mental distress, anguish and inconvenience arising from the unlawful termination of employment.
- d) Interest and costs
- e) Any other relief the Court may deem fit.

